

GAHC010175882022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP(IO)/224/2022

ON THE DEATH OF SRI SACHIN CHANDRA DAS HIS LEGAL HEIR
DAMAYANTI DAS AND 5 ORS
HIS LEGAL HEIRS -

1: 1) SMT. DAMAYANTI DAS
W/O. LT. SACHIN CHANDRA DAS
R/O. MALIGAON CHARIALI
P.S. JALUKBARI
GUWAHATI-12.

1: 4) MITHU DAS
S/O. LT. SACHIN CHANDRA DAS
R/O. MALIGAON CHARIALI
P.S. JALUKBARI
GUWAHATI-12.

1: 3) SANKAR DAS
S/O. LT. SACHIN CHANDRA DAS
R/O. MALIGAON CHARIALI
P.S. JALUKBARI
GUWAHATI-12.

1: 2) DEEPJYOTI DAS
S/O. LT. SACHIN CHANDRA DAS
R/O. MALIGAON CHARIALI
P.S. JALUKBARI
GUWAHATI-12.

2: 1) SMT. ANJALI BARMAN
W/O. SHRI RANJIT BARMAN
R/O. MALIGAON
GUWAHATI-12.

2: SMT. RENU AGARWALLA

W/O. SHRI PRAKASH AGARWALLA
R/O. BISHNU GARDEN WZ 9
PART-1
PANJABI MARKET
NEW DELHI.

3: JHUNU THAKURIA
S/O. LT. LAXMI THAKURIA
R/O. NAGARBARA
DIST. KAMRUP
ASSAM.

4: UTSAV THAKURIA
S/O. LT. LAXMI THAKURIA
R/O. NAGARBARA
DIST. KAMRUP
ASSAM.

5: SMT. SIKHA PATHAK
W/O. SHRI BOTESWAR PATHAK

6: SMT. DOLLY PATGIRI
W/O. SRI KUKUT PATGIRI
R/O. SAECHIBORI
P.O. DHMPIHARA
DIST. GOALPARA
ASSAM

VERSUS

ON THE DEATH OF SRI PARESH CHANDRA DAS HIS LEGAL HEIRS BHANU
DAS AND 2 ORS
HIS LEGAL HEIRS -

1:3) MISS GITANJALI DAS
D/O. LT. PARESH CHANDRA DAS
R/O. MALIGAON CHARIALI
P.S. JALUKBARI
GUWAHATI-12.

1:2) SRI PRANAB JYOTI DAS
S/O. LT. PARESH CHANDRA DAS
R/O. MALIGAON CHARIALI
P.S. JALUKBARI
GUWAHATI-12.

1:1) SMT. BHANU DAS

W/O. LT. PARESH CHANDRA DAS
R/O. MALIGAON CHARIALI
P.S. JALUKBARI
GUWAHATI-12

For the Petitioner(s) : Mr. S. P. Roy, Advocate
: Mr. J. Das, Advocate

For the Respondent(s) : Mr. D. Mozumder, Sr. Advocate
: Mr. D. Nath, Sr. Government Advocate

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 15.03.2024

1. This is an application under Article 227 of the Constitution of India challenging the order dated 02.08.2022 passed in Misc. (J) Case No.14/2022 arising out of Title Appeal No.10/2018.
2. By the said impugned order, the learned First Appellate Court i.e. the Court of the Additional District Judge, F.T.C. No.3, Kamrup (M) at Guwahati had condoned the delay of 3883 days in preferring the Title Appeal No.10/2018.
3. From the materials on record, it appears that the Petitioners herein had filed a suit being Title Suit No.50/2002 before the Court of the Civil Judge (Senior Division) No.1, Kamrup (M) at Guwahati which subsequently was endorsed to the Court of the Civil Judge No.3, Kamrup (M) at Guwahati for disposal. The said suit was partly decreed vide a judgment and decree dated 30.06.2007 inasmuch the suit was decreed against the Defendant Nos. 1 to 11, 13 and 14. However, as regards the Defendant No.12, the suit was dismissed. It is relevant to mention that as per the judgment and decree, the Plaintiffs who

are the Petitioners herein were declared to have right, title and interest on the Schedule A, C-1, C-2, E, F, H, J, K, B, D-1, D-2, G & I. Further to that, the learned Trial Court further decreed the ejectment of the Defendant No.8 from the Schedule-F land, Defendant No.10 from the Schedule-H land, Defendant No.9 from the Schedule D-2 land, Defendant Nos. 1 to 6 and 11 from Schedule J and K land and Defendant Nos. 13 and 14 from the Schedule L and M land respectively.

4. It is further apparent from the records that the Defendant No.1 in the said suit along with the Defendant No.7 had filed an application before the Settlement Officer for cancellation of the name of one Sachin Das and Nripen Das from the land measuring 1 Bigha 4 Kathas 2 Lechas of Dag No.407 under Patta No.25; 1 Bigha 3 Kathas 4 Lechas of Dag No.467; 1 Bigha 0 Katha 14 Lechas of Dag No.466 under Patta No.385 and 3 Katha 15 Lechas of Dag No.196 under Annual Patta No.5 of Village Maligaon and land measuring 7 Bighas 2 Kathas 17 Lechas of Dag No.10; 25 Bighas 2 Kathas 14 Lechas of Dag No.2 under K.P. Patta No.20 under Village Maligaon, N.C. all are under Jalukbari Mouza, District Kamrup (M). The said application was however dismissed by the Settlement Officer vide an order dated 06.05.2007. Against the said, an appeal was preferred before the learned Assam Board of Revenue which was registered and numbered as Revenue Appeal No.117RA(K)/2007. The learned Assam Board of Revenue vide its judgment dated 15.09.2011 dismissed the said appeal. In doing so, the learned Assam Board of Revenue had taken into consideration that the Title Suit No.50/2002 which was pending in the Court of the Civil Judge (Senior Division) No.3, Kamrup (M) at Guwahati was decreed vide judgment and decree dated 30.06.2007 in favour of the Petitioner No.1 herein and others in the said proceedings. The Respondents herein thereupon did not take any steps

for almost 7 years. On 22.03.2018, the Respondents herein filed Title Appeal No.10/2018 along with an application for condoning the delay of 3883 days. The said application for condonation of delay was subsequently registered as Misc. (J) Case No.14/2022. Vide the impugned order dated 02.08.2022, the learned First Appellate Court condoned the delay of 3883 days by observing that the Respondents herein were prevented by sufficient cause in preferring the appeal. It was further observed that the Opposite Parties i.e. the Petitioners herein have not brought anything on record as to what the Respondents herein would have gained by not contesting the suit and by not preferring the appeal in time.

5. In the foregoing paragraphs of the instant order, this Court had duly taken note of that the Respondents herein had due knowledge about the judgment and decree dated 30.06.2007 passed in Title Suit No.50/2002 on 15.09.2011 if not earlier as the said aspect of the matter had been duly mentioned in the judgment of the learned Assam Board of Revenue dated 15.09.2011.

6. The learned First Appellate Court did not at all considered the said aspect of the matter and without any basis or material have come to a finding that the Respondents herein were prevented by sufficient cause. This finding in the opinion of this Court is being contrary to the materials on record is a perverse finding. Further to that, the learned First Appellate Court vide the impugned order opined that the Opposite Party i.e. the Petitioners herein had not brought anything on record as to what the Respondents herein would gain by not filing the appeal. The said aspect of the matter is on the face of it misconceived notion of how an application under Section 5 of the Limitation Act is required to be considered.

7. Under such circumstances, as the learned First Appellate Court had committed a glaring illegality which shocks the judicial conscious of this Court,

the impugned order dated 02.08.2022 passed in Misc.(J) Case No.14/2022 stands set aside and quashed.

8. The consequential affect of setting aside the impugned order dated 02.08.2022 is that the Title Appeal No.10/2018 cannot be entertained as being barred under law.

9. With above observations and directions, the instant petition stands allowed.
No costs.

JUDGE

Comparing Assistant